

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NEW CENTURY MORTGAGE
CORPORATION,

Plaintiff,

vs.

No. CIV 05-0694 LH/KBM

SHAPHAN DAVID LAOS,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court *sua sponte*. The Court, having considered the Defendant's Notice of Removal, the applicable law, and otherwise being fully advised, finds that the Court lacks subject matter jurisdiction over the complaint and remands it to the state court.


The Plaintiff filed its complaint for foreclosure in the State of New Mexico's Eighth Judicial District Court. The Defendant removed the action to this Court pursuant to 28 U.S.C. § 1446(a), asserting that the case is removable "because there is complete diversity between the parties." Notice of Removal (Docket No. 1) at 3. Only those actions over which this Court would have had original subject matter jurisdiction may be removed. 28 U.S.C. § 1441(a). Diversity of the parties alone is insufficient to confer jurisdiction on this Court, and the Defendant has failed to allege that the requisite amount in controversy has been met. 28 U.S.C. § 1332 (a).

Even if the Court would have had original jurisdiction over the case, the Defendant's citizenship precludes removal. "Any civil action of which the district courts have original jurisdiction

founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441 (b). The Defendant seeks to remove the case based on diversity jurisdiction, but he is a citizen of the state in which the action was brought. Removal is therefore improper.

IT IS, THEREFORE, ORDERED that the case is **remanded**.

IT IS SO ORDERED.



SENIOR UNITED STATES DISTRICT JUDGE